

TRANSFERRING A STATE CHILD CUSTODY CASE TO CHEROKEE NATION DISTRICT COURT

INSTRUCTIONS

These instructions are meant as a general guide for transferring a child custody case from a State Court to the Cherokee Nation District Court, and should not replace consulting an attorney. These are Cherokee Nation specific instructions and forms, but since they are based on Federal law, 25 U.S.C. § 1911 (b), they should be the same or similar for every other Federally Recognized Tribe.

Step One: The Petitioner (i.e. parent(s), Indian Custodian(s), and or Cherokee Nation) should file a *Motion to Transfer Jurisdiction and Dismiss Case* (Form 1) with the State Court, and set it for a hearing before the State Court Judge using the *Order Setting Hearing on Motion to Transfer Jurisdiction and Dismiss Case* (Form 2).

If the State Court Judge signs an *Order Transferring Jurisdiction to Cherokee Nation* (Form 3) move on to Step Two. If the State Court Judge does not sign the order then your case will continue in State Court. **Please note that Step One may vary depending on the State Court Judge, but you must complete Step One before continuing to Step Two.**

Step Two: Go to the Cherokee Nation District Court and file a *Petition for Acceptance of Jurisdiction and Award of Temporary Custody* (Form 4) and attach a copy of the *Order Transferring Jurisdiction to Cherokee Nation* (Form 3) to the petition (Form 4), and set the petition for a hearing before the Cherokee Nation Judge using the *Order Setting Hearing on Petition for Acceptance of Jurisdiction and Award of Temporary Custody* (Form 5).

If the Cherokee Nation Judge accepts jurisdiction of your case it will stay in Cherokee Nation Court, but if the Cherokee Nation Judge declines jurisdiction of your case it will continue in State Court.

FORM BANK

1. MOTION TO TRANSFER JURISDICTION AND DISMISS CASE
2. ORDER SETTING HEARING ON MOTION TO TRANSFER JURISDICTION AND DISMISS CASE
3. ORDER TRANSFERRING JURISDICTION TO CHEROKEE NATION
4. PETITION FOR ACCEPTANCE OF JURISDICTION AND AWARD OF TEMPORARY CUSTODY
5. ORDER SETTING HEARING ON PETITION FOR ACCEPTANCE OF JURISDICTION AND AWARD OF TEMPORARY CUSTODY
6. ORDER ACCEPTING JURISDICTION AND AWARDING TEMPORARY CUSTODY
7. ORDER DECLINING JURISDICTION AND NOTICE TO STATE JUDGE

Forms may be downloaded at <https://www.cherokeecourts.org/District-Court/Documents>

ICWA Transfer Form Number 1

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF _____

In The Matter of:

_____, dob: __/__/__,
_____, dob: __/__/__,
_____, dob: __/__/__,
_____, dob: __/__/__,

Minor Child(ren).

Case No. JD ____ - _____

MOTION TO TRANSFER JURISDICTION AND DISMISS CASE

COMES NOW the Petitioner(s), _____, the undersigned, and petitions the Court to transfer this action to the Cherokee Nation District Court, located on the second floor of the WW Keeler Tribal Complex at 17675 S Muskogee, Tahlequah, OK 74464, and to dismiss the state court proceeding pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1911(b). As grounds therefore, the Petitioner(s) states:

1. The minor child(ren) involved in this proceeding is an/are "Indian child(ren)" as defined by the Indian Child Welfare Act, 25 U.S.C. § 1903(4), in that the child(ren) is/are under eighteen years of age, and the child(ren) is a/are citizen(s) of, Cherokee Nation, or is eligible for citizenship in Cherokee Nation.
2. The Cherokee Nation is an "Indian tribe" as defined by the Indian Child Welfare Act, 25 U.S.C. § 1903(8), and this fact is entitled to judicial notice by virtue of publication in the Federal Register.
3. The Cherokee Nation is "the Indian child(ren)'s tribe" as defined by the Indian Child Welfare Act, 25 U.S.C. § 1903(5), in that the child(ren) is a/are a citizen of, or eligible to be a citizen of Cherokee Nation.
4. This is a child custody proceeding as defined by the Indian Child Welfare Act, 25 U.S.C. § 1903(1), in that it involves a foster care placement, termination of parental rights, pre-adoptive placement or adoptive placement.
5. The Indian Child Welfare Act, 25 U.S.C. § 1911(b), requires that the state court transfer a child custody proceeding involving an Indian child to the jurisdiction of the Tribe when the Indian child's parent(s), Indian Custodian, and or Tribe petitions the state court.
6. Good cause does not exist to deny transfer of this proceeding.
7. The Petitioner seeks Cherokee Nation District Court to take jurisdiction of this proceeding and to provide planning and placement for the named child(ren).

WHEREFORE Petitioner requests the Court to transfer the above captioned proceeding to the Cherokee Nation District Court, located on the second floor of the WW Keeler Tribal Complex at 17675 S Muskogee, Tahlequah, OK 74464, and to dismiss this case as stated above.

DATED this _____ day of _____, 20____.

Petitioner's Signature

Petitioner's Full Name:

Address:

Phone Number:

Email Address:

Certificate of Mailing

I, the undersigned, do hereby certify that on the ____ day of _____,
20____, that I hand delivered, emailed, faxed and or mailed a true and correct file stamped copy
of the foregoing document to the following person(s):

Mother/Mother’s Attorney

Child/Child’s Attorney

Cherokee Nation ICW

Cherokee Nation Attorney General

Father/Father’s Attorney

DHS

State District Attorney

Other

Signature

ICWA Transfer Form Number 2

IN THE DISTRICT COURT OF THE CHEROKEE NATION

In The Matter of:

_____, dob: ____/____/____,
_____, dob: ____/____/____,
_____, dob: ____/____/____,
_____, dob: ____/____/____,

Minor Child(ren).

Case No. JD ____ - ____

ORDER SETTING HEARING ON MOTION
TO TRANSFER JURISDICTION AND DISMISS CASE

The Court hereby sets the MOTION TO TRANSFER JURISDICTION AND DISMISS CASE filed herein for hearing on the ____ day of _____, 20____ at ____:____, ____M, at the State of _____, County of _____ Courthouse, located at _____.

The Court further orders the Petitioner(s) to give appropriate notice to all parties to this matter including but not limited to the child(ren), parent(s), guardian(s), Indian Custodian(s), the Attorney General of Cherokee Nation, Cherokee Nation Indian Child Welfare, attorneys of record, and or the District Attorney.

Failure of any interested party to appear after receiving notice may result in this matter being dismissed and or granted without further hearing. Parties should be prepared at the time of the hearing to proceed with the case including but not limited to having their appropriate witnesses and evidence present with them at the time of the hearing.

It is so ordered this ____ day of _____, 20____.

Honorable Judge _____

State of _____

Phone _____

Certificate of Mailing

I, the undersigned, do hereby certify that on the _____ day of _____,
20_____, that I hand delivered, emailed, faxed and or mailed a true and correct file stamped copy
of the foregoing document to the following person(s):

Mother/Mother’s Attorney

Child/Child’s Attorney

Cherokee Nation ICW

Cherokee Nation Attorney General

Father/Father’s Attorney

DHS

State District Attorney

Other

Signature

ICWA Transfer Form Number 3

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF _____

In The Matter of:

_____, dob: __/__/__,
_____, dob: __/__/__,
_____, dob: __/__/__,
_____, dob: __/__/__,

Minor Child(ren).

Case No. JD ____-____

ORDER TRANSFERRING JURISDICTION TO CHEROKEE NATION

On petition of _____, and it appearing to the Court that the *Motion to Transfer Jurisdiction and Dismiss the Case* is well taken and grounds exist,

IT IS THEREFORE ORDERED that the above-entitled proceeding be transferred to the jurisdiction of the Cherokee Nation District Court, and that once the Cherokee Nation District Court accepts this matter the above-entitled proceeding be, and the same hereby is, dismissed from the _____ Court, for _____ County, State of _____, and

THE CLERK OF THE COURT IS DIRECTED AND ORDERED to forward to the Cherokee Nation District Court Clerk, Kristi Moncooyea, P.O. Box 1097, Tahlequah, OK 74465, a certified copy of the complete file in this matter.

It is so ordered this ____ day of _____, 20____.

Honorable Judge _____

State of _____

Phone _____

Certificate of Mailing

I, the undersigned, do hereby certify that on the ____ day of _____,
20____, that I hand delivered, emailed, faxed and or mailed a true and correct file stamped copy
of the foregoing document to the following person(s):

Mother/Mother’s Attorney

Child/Child’s Attorney

Cherokee Nation ICW

Cherokee Nation Attorney General

Father/Father’s Attorney

DHS

State District Attorney

Other

Signature

ICWA Transfer Form Number 4

IN THE DISTRICT COURT OF THE CHEROKEE NATION

In The Matter of:

_____, dob: __/__/__,
_____, dob: __/__/__,
_____, dob: __/__/__,
_____, dob: __/__/__,

Minor Child(ren).

Case No. JD ____ - ____

PETITION FOR ACCEPTANCE OF JURISDICTION
AND AWARD OF TEMPORARY CUSTODY

COMES NOW the Petitioner(s), _____, the undersigned, and requests the Tribal Court to accept jurisdiction of the child custody proceeding involving the above-named child(ren), which is pending in _____ Court, for _____ County, State of _____, Docket No. _____. This proceeding is being transferred to the Tribe pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1911(b). The Petitioner also requests the court to award temporary custody of the above-named minor child to the Cherokee Nation Indian Child Welfare until such time as a hearing can be scheduled to determine whether custody should continue. As grounds therefore, the Petitioner(s) states:

1. That the minor child is a citizen of Cherokee Nation, Enrollment No: _____, or eligible for citizenship in Cherokee Nation.
2. That the natural ☐ mother: enrollment # _____, and or ☐ father: enrollment # _____ of the minor child(ren) is/are a citizen(s) of Cherokee Nation.
3. That the dependency and neglect proceeding involving the above named minor child, as listed above, was based upon acts of dependency or neglect by the natural mother/father.
4. That the Petitioner filed a motion to Transfer Jurisdiction and Dismiss the State Court Proceeding listed above, requesting transfer of the case to the Cherokee Nation District Court pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1911(b).
5. That it is in the best interests of the minor child that this Court accept jurisdiction of the State Court Proceeding.
6. That the natural father/mother, due to his/her acts of dependency or neglect, is presently unable to properly provide for the care and maintenance of the above-named minor child(ren), making the child(ren) a dependent or neglected child(ren) as defined by Cherokee Nation law, 10 CNCA § 1100 et seq.

7. That it is in the best interests of the minor child that temporary custody of the minor child be awarded to the Cherokee Nation Indian Child Welfare until such time as a hearing is conducted to determine whether custody should continue with the Cherokee Nation Indian Child Welfare.

WHEREFORE, Petitioner requests that the Cherokee Nation District Court accept jurisdiction of the child custody proceeding that was pending in the above listed State Court, and award temporary custody of the minor child to the Cherokee Nation Indian Child Welfare until such time as a hearing is conducted to determine whether custody should continue.

DATED this _____ day of _____, 20_____.

Petitioner's Signature

Petitioner's Full Name: _____

Address: _____

Phone Number: _____

Email Address: _____

Certificate of Mailing

I, the undersigned, do hereby certify that on the _____ day of _____,
20_____, that I hand delivered, emailed, faxed and or mailed a true and correct file stamped copy
of the foregoing document to the following person(s):

Mother/Mother's Attorney

Father/Father's Attorney

Child/Child's Attorney

Cherokee Nation ICW

Cherokee Nation Attorney General

Other

Signature

ICWA Transfer Form Number 5

IN THE DISTRICT COURT OF THE CHEROKEE NATION

In The Matter of:

_____, dob: ____/____/____,

_____, dob: ____/____/____,

_____, dob: ____/____/____,

_____, dob: ____/____/____,

Minor Child(ren).

Case No. JD ____ - ____

ORDER SETTING HEARING ON PETITION FOR ACCEPTANCE
OF JURISDICTION AND AWARD OF TEMPORARY CUSTODY

The Court hereby sets the PETITION FOR ACCEPTANCE OF JURISDICTION AND AWARD OF TEMPORARY CUSTODY filed herein for hearing on the ____ day of _____, 20____ at ____:____, ____ M, at the Cherokee Nation Courthouse, located on the second floor of the WW Keeler Tribal Complex at 17675 S Muskogee, Tahlequah, OK 74464. The Court further orders the Petitioner(s) to give appropriate notice to all parties to this matter including but not limited to the child(ren), parent(s), guardian(s), Indian Custodian(s), the Attorney General of Cherokee Nation, and or Indian Child Welfare.

Failure of any interested party to appear after receiving notice may result in this matter being dismissed and or granted without further hearing. Parties should be prepared at the time of the hearing to proceed with the case including but not limited to having their appropriate witnesses and evidence present with them at the time of the hearing.

It is so ordered this ____ day of _____, 20____.

Cherokee Nation District Court Judge

Certificate of Mailing

I, the undersigned, do hereby certify that on the _____ day of _____,
20_____, that I hand delivered, emailed, faxed and or mailed a true and correct file stamped copy
of the foregoing document to the following person(s):

Mother/Mother's Attorney

Father/Father's Attorney

Child/Child's Attorney

Cherokee Nation ICW

Cherokee Nation Attorney General

Other

Signature

IN THE DISTRICT COURT OF THE CHEROKEE NATION

In The Matter of:

_____, dob: __/__/__,
_____, dob: __/__/__,
_____, dob: __/__/__,
_____, dob: __/__/__,

Minor Child(ren).

Case No. JD ____ - ____

ORDER ACCEPTING JURISDICTION,
AWARDING TEMPORARY CUSTODY, AND
NOTICE TO STATE JUDGE

THIS MATTER having come before the Court upon the *Petition for Acceptance of Jurisdiction and Award of Temporary Custody* filed herein, and the Court having been fully advised in the premises, finds:

1. That the minor child(ren) is a/are Cherokee Nation citizen(s) of, or is eligible for citizenship in Cherokee Nation.
2. That the minor child(ren) is/are the child(ren) of _____ (mother: enrollment # _____), and or _____ (father: enrollment # _____).
3. That the minor child(ren) has/have been or will be returned to the jurisdiction of the Cherokee Nation District Court.
4. That this Court has jurisdiction over the subject matter and parties pursuant to Cherokee Nation Law, 10 CNCA § 40 et seq. and 10 CNCA § 1100 et seq., and the Indian Child Welfare Act, 25 U.S.C. § 1911(b).
5. That reasonable grounds exist to believe that the child(ren) is/are dependent or neglected as defined by Cherokee Nation law.
6. That it is in the best interest of the minor child(ren) that the Cherokee Nation District Court accept jurisdiction of the child(ren) custody proceeding that is pending in the _____ Court, for _____ County, State of _____, Docket No. _____, and that the Cherokee Nation Indian Child Welfare be awarded temporary custody of the minor child(ren) until such time as a hearing is conducted in the Cherokee Nation District Court to determine whether custody should continue.
7. This Order shall be sent to the State Judge giving notice that Cherokee Nation District Court accepts jurisdiction over the case and child(ren).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED That the Cherokee Nation District Court hereby accepts jurisdiction of the child custody proceeding listed above, involving the minor child(ren); that the Cherokee Nation Indian Child Welfare is hereby awarded temporary custody of the minor child(ren); that this matter be set for a hearing forthwith to determine whether custody should continue in the Cherokee Nation Indian Child Welfare; and that this Order shall be sent to the State Judge giving notice that Cherokee Nation District Court accepts jurisdiction over the case and child(ren).

It is so ordered this _____ day of _____, 20_____.

Cherokee Nation District Court Judge

Certificate of Mailing

I, the undersigned, do hereby certify that on the _____ day of _____, 20_____, that I hand delivered, emailed, faxed and or mailed a true and correct file stamped copy of the foregoing document to the following person(s):

Mother/Mother's Attorney

Father/Father's Attorney

Child/Child's Attorney

Cherokee Nation ICW

Cherokee Nation Attorney General

Other

State Judge

Signature

ICWA Transfer Form Number 7

IN THE DISTRICT COURT OF THE CHEROKEE NATION

In The Matter of:

_____, dob: __/__/__,
_____, dob: __/__/__,
_____, dob: __/__/__,
_____, dob: __/__/__,

Minor Child(ren).

Case No. JD ____ - ____

ORDER DECLINING JURISDICTION, AND
NOTICE TO STATE JUDGE

THIS MATTER having come before the Court upon the *Petition for Acceptance of Jurisdiction and Award of Temporary Custody* filed herein, and the Court having been fully advised in the premises, finds:

1. That the Cherokee Nation District Court declines jurisdiction.
2. This Order shall be sent to the State Judge giving notice that Cherokee Nation District Court accepts jurisdiction over the case and child(ren).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED That the Cherokee Nation District Court declines jurisdiction, and that this Order shall be sent to the State Judge giving notice that Cherokee Nation District Court declines jurisdiction over the case and child(ren).

It is so ordered this ____ day of _____, 20____.

Cherokee Nation District Court Judge

Certificate of Mailing

I, the undersigned, do hereby certify that on the ____ day of _____,
20____, that I hand delivered, emailed, faxed and or mailed a true and correct file stamped copy
of the foregoing document to the following person(s):

Mother/Mother’s Attorney

Child/Child’s Attorney

Cherokee Nation Attorney General

State District Attorney

State Judge

Father/Father’s Attorney

Cherokee Nation ICW

DHS

Other

Signature